

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IRVING JACKSON,

Appellant,

vs.

LAWRENCE E. WILSON,
Warden, San Quentin Prison,
Tamal, California,

Appellee.

No. 22402

APPELLEE'S BRIEF

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FILED

APR 8 1968

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	<u>Page</u>
JURISDICTION	1
STATEMENT OF THE CASE	
A. Proceedings in the State Courts	1
B. Proceedings in the Federal Courts	2
APPELLANT'S CONTENTION	2
SUMMARY OF APPELLEE'S ARGUMENT	3
ARGUMENT	
THE DISTRICT COURT PROPERLY DENIED APPELLANT'S PETITION, CORRECTLY CONCLUDING THAT HIS ARREST WAS BASED UPON PROBABLE CAUSE AND THEREFORE DID NOT VIOLATE THE FOURTH AMENDMENT.	3
CONCLUSION	7

TABLE OF CASES

	<u>Page</u>
Burks v. United States 287 F.2d 117 (9th Cir. 1961) <u>cert. denied</u> , 369 U.S. 841 (1962)	7
Hollins v. United States 338 F.2d 227 (9th Cir. 1964) <u>petition for cert. dismissed</u> 385 U.S. 802 (1966)	6
Ng Pui Yu v. United States 352 F.2d 626 (9th Cir. 1965)	6
People v. Wright 216 Cal.App.2d 866 31 Cal.Rptr. 432 (1963)	3,4,5
Teasley v. United States 292 F.2d 460 (9th Cir. 1961)	6
Ward v. United States 316 F.2d 113 (9th Cir.) <u>cert. denied</u> , 375 U.S. 862 (1963)	6

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JURISDICTION

STATEMENT OF THE CASE

A. Proceedings in the State Courts:

1.

poses of robbery) and 211 (robbery) (two counts). He was sentenced to state prison for the term prescribed by law on all counts, such sentences to run concurrently. Appellant did not appeal (TR 41).

In his petition directed to the District Court appellant alleges that he filed petitions seeking habeas corpus relief in the Marin County Superior Court and the California Court of Appeal, First Appellate District. He alleges that these petitions were denied respectively on July 7, 1966 and August 4, 1966 (TR 5-6). On January 31, 1967, the California Supreme Court denied appellant's petition for writ of habeas corpus, holding that the writ did not lie to attack a final judgment on the grounds of illegal arrest and search (TR 35-40).

B. Proceedings in the Federal Courts:

Appellant's petition for writ of habeas corpus in the United States District Court for the Northern District of California was received on May 26, 1967 and filed on October 12, 1967 (TR 1). The District Court denied appellant's petition on October 12, 1967 (TR 50-53). Appellant filed motions for a certificate of probable cause and for leave to appeal in forma pauperis on November 1, 1967 (TR 54-62). These motions were granted on November 3, 1967 (TR 63). Notice of appeal was filed November 13, 1967 (TR 64-66).

APPELLANT'S CONTENTION

It was error for the District Court to deny appellant's petition for writ of habeas corpus without reviewing

the record of appellant's trial upon which appellant based his claim that his arrest and subsequent search violated his rights under the Fourth Amendment.

SUMMARY OF APPELLEE'S ARGUMENT

The District Court properly denied appellant's petition, correctly concluding that his arrest was based upon probable cause and therefore did not violate the Fourth Amendment.

ARGUMENT

THE DISTRICT COURT PROPERLY DENIED
APPELLANT'S PETITION, CORRECTLY
CONCLUDING THAT HIS ARREST WAS BASED
UPON PROBABLE CAUSE AND THEREFORE DID
NOT VIOLATE THE FOURTH AMENDMENT.

Appellant argues that the District Court's failure to consult the trial record renders the court's order erroneous. The District Court based its ruling on the facts contained in appellant's petition, and upon the opinion of the California Court of Appeal in People v. Wright, 216 Cal.App.2d 866, 31 Cal.Rptr. 432 (1963). Wright was appellant's co-defendant in the state trial proceedings. On appeal he alleged the same issue presently alleged by appellant, which the California Court of Appeal treated on the merits and decided adversely to Wright. Appellant stated in his petition to the District Court that he did not appeal because his co-defendant Wright had processed an appeal (TR 3).

The District Court's ruling was correct because the few facts stated in appellant's petition did not contradict

the findings of the California Court of Appeal in People v. Wright, supra. Therefore, in essence, appellant's petition argued a proposition of law - that the trial court (and also the Court of Appeal) had erred in ruling that probable cause existed for his arrest.

The District Court did not merely accept the finding of the California appellate court. Rather, it reviewed the facts (as stated in appellant's petition and the Wright opinion) in light of federal cases treating the issue of probable cause for arrest. We submit that the Court correctly concluded that such probable cause existed.

The following statement of the facts bearing on appellant's claim of illegal arrest and search is taken from the California Court of Appeal's decision in People v. Wright, supra.

On November 16, 1961, three men entered a Los Angeles liquor store and, at gun point, robbed the owner and a customer. The victims evidently gave a description of the three bandits to the police, which included the observation that one of the men had a scar or cut on the left side of his face. 216 Cal.App.2d at 868, 31 Cal.Rptr. at 433.

"Immediately following defendants' departure, a report of the robbery was given to the police (Officer Salcido) by the victims. Later that same day Officer Salcido's report reached Officer Burke who was directed to an address on Occidental; at that address he was referred to another address

in the 1800 block on West Adams Street. In the company of Officer Cline and two other officers he proceeded to the West Adams address, arriving there at approximately 6:45 p.m. Cline looked through a rear window of the building and observed Jackson (a large scar on the left side of his face) seated on a couch. Wright was seated in a chair. Cline communicated his observations to the other officers who were stationed at the front door. Officer Burke then knocked on the front door, identified himself and demanded admittance. Defendant answered the door about one minute later and was placed under arrest. The officers then entered the apartment and placed Wright [sic] and Jackson under arrest. According to Burke, the description of the three men fitted that contained in the robbery report.

A search was made of Jackson at the time of his arrest; as a result, two loose .22 caliber long rifle bullets and a box of 30 shells (same caliber bullet) were recovered from his right pants pocket. The officers also found a .22 caliber revolver, loaded with 8 shells, under a cushion of the couch where Jackson was seated." 216 Cal.App.2d at 868-869, 31 Cal.Rptr. at 433-34.

The information known by the arresting officers at the time they arrested appellant and his co-defendants was sufficient to lead a person of ordinary reasonable

judgment, intelligence, care and prudence to believe that they were the three perpetrators of the robberies. Ward v. United States, 316 F.2d 113, 117 (9th Cir.), cert. denied, 375 U.S. 862 (1963); Hollins v. United States, 338 F.2d 227, 229 (9th Cir. 1964), petition for cert. dismissed, 385 U.S. 802 (1966).

It was held in Hollins that the arresting officer had probable cause for the arrest of the defendant where he had trustworthy information that a bank had been robbed not more than an hour previously by a man whose general appearance was similar to that of the defendant and the officer had trustworthy information that the robber could be found at a certain address.

It is not required that probable cause be established fully by facts within the personal knowledge of the arresting officer. A combination of information and personal knowledge may raise the inference beyond opinion, suspicion, and conjecture to reasonable probability. All information in the officer's possession, fair inferences therefrom, and observations made by him are pertinent. Ng Pui Yu v. United States, 352 F.2d 626, 631 (9th Cir. 1965). Where the arresting officers know that a felony had been committed and have probable cause and reasonable grounds for believing that the person arrested was a knowing participant in the commission of said felony his arrest by the officers without a warrant is lawful. Teasley v. United States, 292 F.2d 460, 465 (9th Cir. 1961).

And, where the officers viewed the occupants in a room through an outside window and observed that they matched the descriptions of the robbery suspects they were seeking, sufficient probable cause to support the subsequent arrest was established. Compare, Burks v. United States, 287 F.2d 117, 123 (9th Cir. 1961), cert. denied, 369 U.S. 841 (1962).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the district court denying the writ of habeas corpus should be affirmed.

DATED: April 8, 1968

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CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

DATED: April 8, 1968

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